IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9867 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMJIBHAI HIRALAL VASAVA

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/03/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. J.S.Brahmbhatt, the learned advocate appearing for the respondent workman. With the consent of the learned advocates for the parties, the matter is taken up for

final hearing today itself.

2. The facts giving rise to the present petition, in short, are that the respondent herein was working as a conductor. On17.7.1993, the bus in which the respondent was on duty as a conductor was checked by the checking staff of the petitioner corporation and certain irregularities in respect of non issuance of tickets were found though fare was collected for which he was served with a chargesheet dated 21.7.1993 and thereafter departmental inquiry was held in which the respondent was given opportunity to cross examine the witnesses. Ultimately, by order dated 30.9.1996, the respondent was dismissed from service which order of dismissal was challenged by the respondent by filing the reference (LCS) No. 104 of 1995. The labour court has allowed the said reference by its judgment and award dated 5.11.1998 and has directed the petitioner corporation to reinstate the respondent workman in service with continuity of service and has also directed the petitioner to stop two annual increments of the respondent workman with future effect. Said judgment and award dated 5.11.1988 has been challenged by the petitioner corporation by way of this petition under Article 226 and 227 of the Constitution of India.

2. The respondent was served with the notice issued by this court and has appeared through his advocate Mr. J.S.Brahmbhatt and has also filed the affidavit in reply.

3. Learned advocate Mr.Raval has submitted that in such cases when the misappropriation has been found to be proved, the labour court ought not to have interfered with the order of punishment passed by the corporation. As against that, it has been submitted by Mr. Brahmbhatt, the learned advocate appearing for the respondent workman that as a matter of fact, at the time of checking of his bus, the respondent was busy in road booking on 17.7.1993 and that the respondent has not recovered fares from the said passengers as alleged. He has also submitted that more than four years have passed without any gainful employment and the back wages have also been denied to the respondent workman while imposing the penalty of stoppage of two yearly increments with future effect and, therefore, now this Court should not interfere with the impugned award passed by the labour court.

4. I have considered the submissions made by the learned advocates for the parties. I have also perused the impugned award. From the award it appears that the

labour court has, while upon the purshis filed by the respondent workman at Exh. 9/10. By said purshis Exh. 9/10, the respondent has submitted before the labour court that he is not challenging the legality and validity of the departmental inquiry held against him. However, he has kept his right open to challenge the findings given by the inquiry officer. Relying upon the said purshis and by exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, the labour court has appreciated the contentions of the parties and after appreciation of the facts and circumstances of the case, the labour court found that the impugned order of punishment of dismissal is harsh and unjustified and, therefore, the labour court directed the petitioner corporation to reinstate the respondent workman in service with continuity of service but without back wages since the respondent has not pressed for back wages vide his purshis Exh.9/10 and as a measure of punishment, the labour court imposed punishment of stoppage of two annual increments of the respondent workman with future effect. During the course of hearing, without prejudice to his contentions that the impugned award is bad in law and is required to be set aside, learned advocate Mr. Raval has submitted that the labour court ought to have imposed some more punishment while reinstating the respondent workman in service. As against that, learned advocate Mr. Brahmbhatt has this court should not interfere with the direction of reinstatement passed by the labour court. In the facts and circumstances of the case, as also looking to the length of service of the respondent workman, I am of the opinion that the labour court was right in holding that the impugned order of punishment of dismissal is harsh and unjusified. However, I am of the opinion that looking to the gravity of misconduct established against the respondent workman, some more punishment ought to have been imposed by the labour court. Learned advocate appearing for the respondent workman has left it to the discretion of this court. Therefore, in the facts and circumstances of the case, I am of the opinion that it would be just and proper and also would met the ends of justice if the petitioner corporation is directed to stop four annual increments of the respondent workman with future effect instead of two as ordered by the labour court. To that extent impugned award passed by the labour court is required to be modified. I, therefore, pas the following order.

This petition is partly allowed. The impugned award of the labour court is confirmed in so far as it relates to reinstatement of the respondent in service without back wages. The petitioner corporation is

directed to stop four annual increments of the respondent workman with future effect insntead of two as ordered by the labour court. To that extent, the award of the labour court shall stand modified. Rest of the award of the labour court is confirmed. RUle is accordingly made absolute to the extent indicated hereinabove with no order as to costs.

Petitioner Corporation is accordingly directed to reinstate the respondent in service with continuity of service and without back wages within one month from the date of receipt of the certified copy of this order. The petitioner corporation is further directed to pay the wages to the respondent workman from the date of the impugned award dated 5.11.1998 till the date of his actual reinstatement, if not paid so far, within two months from the date of receipt of the certified copy of this order.

15.3.2000. (H.K.Rathod,J.)

Vyas